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- 1 8. “Defendants” means AMNJ Enterprises, Inc. and Joel Burton.
- 2 9. “Defendants’ Counsel” means the law firm of Fisher & Phillips LLP.
- 3 10. “Effective Date” means the day the Settlement is Final as defined in ¶ 12 below.
- 4 11. “Exclusion Letter” means a letter that Settlement Class Members must complete, sign
5 and timely return to exclude themselves from this Settlement, setting forth their name, the last four
6 digits of their Social Security number, and a statement that they request exclusion from the
7 Settlement Class and do not wish to participate in the Settlement.
- 8
- 9 12. “Final” means that the Court has granted final approval of the Settlement without
10 modification and either: (a) the applicable date for seeking appellate review of the Court’s approval
11 of the Settlement has passed without a timely appeal; (b) an appellate court has rendered a final
12 decision or judgment affirming the Court’s final approval of the Settlement without modification,
13 and the time for any further appeal has expired; or (c) any timely appeal has been dismissed.
- 14
- 15 13. “Final Approval Hearing” means the hearing that the Court conducts to determine
16 whether to finally approve and implement the Settlement. In no event shall the Final Approval
17 Hearing be scheduled earlier than 90 days after the CAFA notices are served on the appropriate
18 federal and state government officials pursuant to ¶ 35 below.
- 19
- 20 14. “Maximum Settlement Amount” means \$690,000.00. Defendants’ gross aggregate
21 payments under this Agreement shall not under any circumstances exceed the “Maximum Settlement
22 Amount.”
- 23 15. “Net Settlement Amount” means the Maximum Settlement Amount minus any
24 approved amounts for Class Counsel’s fees and costs, the service payment to the Class
25 Representative, and the costs of the Administrator.
- 26
- 27 16. “Notice” means the approved notice to be mailed to Settlement Class Members that
28 will be agreed upon by the Parties, which, following the Preliminary Approval of the Settlement,

1 will be mailed to each Settlement Class Member explaining the Settlement terms and the claims
2 process, as set forth herein.

3 17. “Parties” means Plaintiff, Jacquelyn Burton, together with Defendants, AMNJ
4 Enterprises, Inc. and Joel Burton, and “Party” means any of the Parties.

5 18. “Participating Class Members” means Settlement Class Members who have not
6 timely submitted a request to be excluded from the Settlement Class.

7 19. “Preliminary Approval” means that the Court has preliminarily approved the
8 settlement and authorized the issuance of Notice to Settlement Class Members, as set forth herein.

9 20. “Release Period” means January 31, 2017 through the date the Court grants
10 Preliminary Approval of the Settlement Agreement.

11 21. “Settlement Class” or “Settlement Class Member(s)” means all individuals who are
12 reflected on the Final Class Data List, which, for the purposes of this Settlement only and for no
13 other purpose whatsoever, shall consist of all delivery drivers who worked for Defendants during the
14 Release Period.

15 22. “Settlement Payment” means the distribution of the Net Settlement Amount to
16 Authorized Claimants pursuant to ¶¶ 33 and 34 below. “Potential Settlement Payment” means the
17 pro-rata share of the Net Settlement Amount allocable to each Settlement Class Member.

18 **II.**

19 **RECITALS**

20 23. On or about January 31, 2019, legal counsel for Jacquelyn Burton filed a Complaint
21 in the United States District Court for the Eastern District of Wisconsin for alleged failure to pay
22 proper minimum wage under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”),
23 alleged failure to provide timely payment pursuant to WI Stat. § 109.01 *et seq.*, and unjust
24 enrichment pursuant to Wisconsin common law on behalf of Plaintiff and a putative class of
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1 similarly situated individuals related to claims that she was not properly reimbursed for mileage
2 expenses related to the business use of her personal vehicle.

3 24. On November 4, 2019, the Parties mediated before Kay Wolf, Esq., an experienced
4 wage and hour class action mediator.

5 25. The Parties were unable to reach a settlement during the November 4, 2019 mediation
6 with Kay Wolf, Esq., but subsequently reached an agreement to settle this putative class and
7 collective action on the terms set forth within this agreement for the Maximum Settlement Amount.
8

9 **III.**
10 **TERMS OF SETTLEMENT**

11 26. Condition Precedent. The Settlement and the payments described herein are
12 conditioned upon passing of the Effective Date and the Settlement becoming Final.

13 27. Maximum Settlement Amount: Defendant's total aggregate payments under this
14 Agreement shall under no circumstances exceed \$690,000.

15 28. Taxes. The Authorized Claimants shall indemnify and hold each Defendant and
16 Defendants' Counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes
17 payable by reason of any such indemnification); provided, however, that, without making any
18 representation or warranty concerning the tax treatment of any sums to be paid under this
19 Agreement, and provided that nothing herein is intended as, and shall not be construed as, any
20 representation or admission by Defendants that any employer's share of income taxes shall be owed
21 with respect to any such sums, the Parties acknowledge and agree that the indemnification
22 obligations of the Authorized Claimants hereunder shall not extend to any potential employer's share
23 of employment taxes owed by Defendants, if any. The Parties intend this settlement to reimburse
24 Authorized Claimants for non-taxable vehicle costs expended by Authorized Claimants in
25 furtherance of their delivery duties on behalf of Defendants.
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1 29. Class Counsel's Attorneys' Fees, Costs and Expenses: Plaintiff and/or Class Counsel
2 will request, and Defendants will not oppose, a payment from the Maximum Settlement Amount for
3 attorneys' fees for all the work already performed and all the work remaining to be performed in this
4 Action, including the costs associated with third-party administration of this Settlement, and for
5 costs and expenses incurred by Class Counsel in prosecuting the Action and implementing the terms
6 of the Settlement, in a gross amount not to exceed a total of Two Hundred Forty-Five Thousand and
7 No/100 Dollars (\$245,000.00), with Class Counsel fees not to exceed 33% of the Maximum
8 Settlement Amount (\$230,000) and costs not to exceed \$15,000. The award of Class Counsel's
9 attorneys' fees, costs and expenses approved by the Court shall be wired to the Administrator within
10 fifteen (15) days after the Effective Date of the settlement, pursuant to ¶ 41(e) below. The Parties
11 agree that any reduction in the amount of attorneys' fees, costs and/or expenses approved for Class
12 Counsel shall not be a basis for rendering the entire Settlement voidable or unenforceable. Any
13 reduction of the amount of attorneys' fees, costs and/or expenses which is ordered by the Court and
14 affirmed during any appeal shall be part of the Net Settlement Amount.

17 30. Service Payments to Class Representative: Subject to the Court's approval, Plaintiff
18 shall be paid a service payment in an amount not to exceed \$5,000.00, to be paid from the Maximum
19 Settlement Amount, for her service as Class Representative, and in consideration for the General
20 Release of Claims as defined in ¶ 47, in addition to any payments she may otherwise receive as
21 Authorized Claimant. The service payment to the Class Representative approved by the Court shall
22 be wired to the Administrator within fifteen (15) days after the Effective Date of the settlement,
23 pursuant to ¶ 41(e) below. The service payment shall be treated as non-employee income and the
24 Class Representative shall be issued an IRS Form 1099 in the amount of her service payment. The
25 Parties agree that any reduction in the amount of the Class Representative's requested service
26 payment shall not be a basis for rendering the entire Settlement voidable or unenforceable. If the
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1 Court approves a service payment of less than the amount sought, the remainder will be retained in
2 the Net Settlement Amount.

3 31. Settlement Administration Costs: All costs incurred in administering the Settlement
4 (including retaining the Administrator who will handle the mailing of notices (including class
5 notices and CAFA notices), forwarding of return notices, processing of claim forms, and mailing of
6 the individual checks to Authorized Claimants) shall be paid from the Maximum Settlement
7 Amount.
8

9 32. Contingent Fund: Twenty-Five Thousand Dollars (\$25,000) of the Maximum
10 Settlement Amount shall be held in a reserve fund, which may be used for late Claimants and other
11 contingencies, subject to consultation and agreement by the parties. Pursuant to ¶42 and
12 notwithstanding ¶34(i), and assuming agreement by both sides, Late Claimants will receive their
13 Potential Settlement Payment unless such payments deplete the Contingent Settlement Fund, in
14 which case Late Opt-Ins will receive a *pro rata* share of the remainder of the Contingent Settlement
15 Fund at the time the claim is approved. Any funds remaining 45 days after distribution of the
16 settlement funds will be held in QSF for the Contingent Settlement Fund for a period of six months
17 from the date of the Preliminary Approval Order; at the conclusion of the six month period, any
18 unclaimed amounts shall revert to Defendants.
19

20 33. Class and Collective Settlement Funds. The remaining portion of the Maximum
21 Settlement Amount, Four Hundred Fifteen Thousand Dollars and No Cents (\$415,000.00) (“Net
22 Settlement Fund”), shall be allocated between two separate funds, which shall be distributed as
23 follows:
24

25 (a) Wisconsin Settlement Fund for Rule 23 Class. Fifty-Eight Thousand One Hundred
26 Dollars and No Cents (\$58,100.00) of the Net Settlement Fund shall be allocated to the Wisconsin
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Settlement Fund. Each member of the Rule 23 Class (as defined in ¶ 37) shall receive a minimum guaranteed payment. The payments to the Rule 23 Class may be subject to a Form 1099.

(b) FLSA or Collective Settlement Fund. Three Hundred Fifty-Six Thousand Nine Hundred Dollars and No Cents (\$356,900.00) of the Net Settlement Fund shall be allocated to the FLSA Settlement Fund. Payments from the FLSA Settlement Fund shall be allocated as provided in ¶ 34. The payments from the FLSA Settlement Fund may be subject to a Form 1099.

34. Distribution to Settlement Class Members from FLSA Settlement Fund:

(a) Within five (5) calendar days after receipt of the Final Class Data List (as set forth in ¶ 37(a) below), the Parties shall calculate each Settlement Class Member's potential Settlement Payment from the FLSA Settlement Fund ("Potential Settlement Payment"), as follows.

(b) The Potential Settlement Payment will be calculated in the following manner:

- For each Settlement Class Member, the total number of his or her recorded miles making deliveries for Defendant between January 31, 2017, and the date the Court grants preliminary approval of the Agreement shall be his/her "Individual Miles." The aggregate of all Individual Miles among all Settlement Class Members shall be the "Class Miles."
- Each Settlement Class Member's Individual Miles shall be divided by the Class Miles to obtain his/her "Payment Ratio."
- Each Settlement Class Member's Payment Ratio shall be multiplied by the Net Settlement Amount to arrive at his/her Potential Settlement Payment.

(c) Submission of Claim Forms: Only the Participating Class Members who submit timely and valid Claim Forms (the "Authorized Claimants") shall be paid from the FLSA Settlement Fund. To be timely, the Claim Forms must be submitted by the deadline indicated on the Notice and Claim Form by mail or fax (if mailed, bearing a postmark on or before the deadline), which date

1 shall be not later than 50 days after the Notice is mailed. To be valid, Claim Forms must be signed,
2 dated, and returned to Class Counsel by the deadline as explained below in ¶ 38. As the Named
3 Plaintiff will sign this Agreement, she does not need to sign, date and return the Claim Form to
4 demonstrate her consent to join the class action.

5 (d) Common Fund Settlement: The FLSA Settlement Fund is a common fund settlement.
6 If any Settlement Class Members do not file valid claims (and thus do not become Authorized
7 Claimants) (hereinafter referred to as “Non-Claimants”), Defendants shall retain the amounts of
8 Potential Settlement Payments from the FLSA Settlement Fund attributable to those Non-Claimants
9 (“Non-Claimant Fund”).
10

11 (e) Tax Allocation of Settlement Payments and Service Payment: One-hundred percent
12 (100%) of the Individual Settlement Payments made will be treated as non-taxable payments in
13 reimbursement for incurred expenses and in settlement of claims for alleged interest and penalties.
14 No payroll or tax withholdings will be taken from these payments. The Authorized Claimants and
15 the Class Representative will be responsible for correctly characterizing their respective settlement
16 payments for tax purposes and paying any taxes owing on said amounts (including without
17 limitation, any interest or penalties required by law). Any tax obligation(s) arising from the
18 Individual Settlement Payments and the Class Representative’s Service Payment will be the sole
19 responsibility of each Authorized Claimant. Authorized Claimants must indemnify, defend and hold
20 Defendants harmless for any federal, state and local tax liability, including taxes, interest, penalties
21 or the like, and required withholdings, which may be or is asserted against or imposed upon
22 Defendants by any taxing authority based upon any failure to pay any taxes due on the amounts
23 being paid to the Authorized Claimants pursuant to this Agreement; provided, however, that, without
24 making any representation or warranty concerning the tax treatment of any sums to be paid under
25 this Agreement, and provided that nothing herein is intended as, and shall not be construed as, any
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1 representation or admission by Defendants that any employer's share of income taxes shall be owed
2 with respect to any such sums, the Parties acknowledge and agree that the indemnification
3 obligations of the Authorized Claimants hereunder shall not extend to any potential employer's share
4 of employment taxes owed by Defendants, if any. None of the Released Parties nor any of their
5 representatives have made any warranty concerning the tax treatment of any sums to be paid under
6 this Agreement, and Settlement Class Members have not relied on any such representation in
7 determining the tax treatment of such sums.
8

9 (f) None of the payments described in this Agreement shall be subject to matching
10 contributions or included as benefits-eligible earnings under any benefit plan or policy of the
11 Defendants or any of their current or former parent companies, subsidiaries or affiliates.
12

13 (g) None of the payments and/or distributions detailed in this Section shall be made until
14 the dates specifically called for herein.

15 (h) Within ten (10) calendar days after receipt of the funds for Authorized Claimants, the
16 Administrator shall mail the Individual Settlement Payments to the Authorized Claimants.

17 (i) If the Settlement Payment from the FLSA Settlement Fund exceeds Thirty-Five
18 Percent (35%) of the total FLSA Settlement Fund, Defendants, in their sole discretion, reserve the
19 right to void this Agreement in full, with the Parties returning to the *status quo ante* and maintaining
20 all rights and arguments existing prior to the Agreement.
21

22 35. Conflict of Terms: In the event of a conflict between the terms set forth in any
23 communication (including, without limitation, the Notice and Claim Form) and this Agreement, the
24 terms of this Agreement shall control.

25 **IV.**
26 **SETTLEMENT PROCEDURES**

27 36. Motion for Preliminary Approval: Within ten (10) business days after the execution
28 of this Agreement by all Parties, Plaintiff shall file a motion for preliminary approval of the

1 Settlement (which shall not contain the monetary terms contained herein), applying to the Court for
2 the entry of an Order that will be agreed upon by the Parties prior to submission:

3 (a) Scheduling a fairness hearing on the question of whether the proposed Settlement
4 should be approved as fair, reasonable, and adequate as to the Settlement Class;

5 (b) Approving as to form and content the proposed Notice to the Settlement Class;

6 (c) Approving as to form and content the proposed Claim Form;

7 (d) Approving the proposed method of requesting exclusion from the Settlement;

8 (e) Directing the mailing of the Notice and Claim Form by first-class mail to the
9 Settlement Class Members;

10 (f) Preliminarily approving the Settlement; and

11 (g) Preliminarily certifying the Settlement Class for purposes of calculating Potential
12 Settlement Payments, for purposes of settlement only.

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15 37. Stipulation to Certification of Rule 23 Class: The parties agree to stipulate to Fed. R.
16 Civ. P. 23 Class Certification of the following class ("Rule 23 Class"):

17 All persons who have worked as a delivery driver for
18 Defendants between January 31, 2017 and the date
19 the Court grants preliminary approval.

20 The stipulation will state that the Parties are so stipulating for settlement purposes only and if
21 this Agreement is not approved by the Court, the Parties agree that this stipulation will be void.

22 38. CAFA Notices: The Administrator shall send notice to the appropriate federal and
23 state officials in accordance with the Class Action Fairness Act (CAFA) within ten (10) days after
24 Plaintiff files the motion for preliminary approval of the Settlement. The Administrator shall be
25 responsible for any and all other CAFA notices or obligations required by law with respect to this
26 Agreement.

1 39. Confidentiality: The Parties agree to treat the Settlement and/or this Agreement as
2 confidential and agree that they shall not communicate to third parties in any way concerning this
3 Agreement or any of its terms or conditions. The Parties and their Counsel may not make any public
4 comment, make or have any communications to or with the press or media, or make any form of
5 advertising or public announcement, utilize any form of social media or website, or issue any press
6 release or media release regarding the terms of this Agreement. If any member of the media contacts
7 the Parties or their counsel regarding this matter, the Party or counsel shall only respond that the
8 matter has been resolved. Notwithstanding the foregoing, the Parties shall have the right to disclose
9 this Agreement as may be required under federal or state tax and/or securities laws or under
10 generally accepted accounting principles. Nothing in this paragraph prohibits Class Counsel from
11 communicating with their clients including Settlement Class Members after the Court grants
12 Preliminary Approval of the Settlement. Nothing in this Agreement shall prevent Defendants or
13 Defendants' Counsel from making any necessary, appropriate, or required disclosures to regulators,
14 auditors, bankers, and the like, or from complying with their obligations under the law. Class
15 Counsel will promptly notify Defendants' Counsel of any third-party legal demand that they disclose
16 information pertinent to the Settlement or this Agreement. Plaintiff agrees not to oppose any motion
17 by Defendants to file the Agreement under seal or for *in camera* review. However, if the Court
18 requires the public filing of this Agreement, such requirement will not affect the validity of the
19 settlement.
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23 40. Notice to the Class:

24 (a) Within seven (7) calendar days after Plaintiff files the motion for preliminary
25 approval of the Settlement, Defendants will provide to the Administrator the names, last known
26 addresses, last known telephone numbers, and the last four digits of the social security numbers of
27 the Settlement Class Members, along with data indicating the number of miles driven for each
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1 Settlement Class Member between January 31, 2017, and February 15, 2020 (“Initial Class Data
2 List”). Defendants will provide Class Counsel a copy of the Initial Class Data List that does not
3 include the contact information or social security numbers of the Settlement Class Members. This
4 data shall be based on Defendants’ payroll and/or other business records and shall be used to prepare
5 the CAFA notices. Within ten (10) calendar days following the Court’s Order granting Preliminary
6 Approval of the Settlement, Defendants will supplement the Initial Class Data List to provide data
7 for employees who worked from February 16, 2020 through the date the Court grants Preliminary
8 Approval (“Supplemental Class Data List”) (together with the Initial Class Data List, “Final Class
9 Data List”).
10

11 (b) Within five (5) calendar days after receipt of the above Final Class Data List from
12 Defendants, to the extent practicable, the Administrator shall consult the National Change of
13 Address Registry, and mail to all Settlement Class Members, by first-class U.S. mail, the Notice and
14 Claim Form, and a pre-addressed, postage-paid return envelope (collectively, “the Notice Packet”).
15

16 41. Claim Process:

17 (a) Settlement Class Members seeking payment from the FLSA Settlement Fund shall
18 have fifty (50) calendar days after the initial mailing of the Notice Packets to return their Claim
19 Forms to the Administrator (“Claims Period Deadline”). Claim Forms may be submitted to the
20 Administrator via U.S. mail postmarked on or before the Claims Period Deadline, or sent by fax or
21 e-mail on or before the Claims Period Deadline. In the case of mailed Claim Forms, the postmark
22 date will be deemed the date of submission. In order for a Settlement Class Member to become an
23 Authorized Claimant for the FLSA Settlement Fund, he/she must verify his/her identity by providing
24 accurately on the Claim Form the last four digits of his/her social security number. This entry shall
25 be checked against the Class Data List.
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1 (b) If a Settlement Class Member submits a timely Claim Form that is rejected by the
2 Administrator as deficient in some material respect (for example, the Settlement Class Member
3 failed to sign the Claim Form), the Administrator will notify the Settlement Class Member in writing
4 of the basis for the deficiency and give the Settlement Class Member a reasonable opportunity to
5 cure the deficiency, including a follow-up telephone call, if necessary. Class Counsel and/or the
6 Administrator also will provide assistance to the Settlement Class Member if requested. Settlement
7 Class Members shall have the greater of fifteen (15) calendar days after notification of the
8 deficiency, or until the Claims Period Deadline, to cure the deficiency.
9

10 (c) The Administrator shall provide the Parties with a weekly update of the number of
11 claims received (including the numbers of valid and deficient claims), and any opt-outs and/or
12 objections, and provide copies of any Claims Forms;
13

14 (d) Within ten (10) days of the Claims Period Deadline, the Administrator shall provide
15 to the Parties any Claim Forms and opt-outs and/or objections not provided in accordance with
16 subparagraph (c) above, along with a final list of all Authorized Claimants and each Authorized
17 Claimant's Individual Settlement Payment (hereinafter "Final Payment List"). The parties shall
18 agree on the Final Payment List.
19

20 (e) Within fifteen (15) days of the Effective Date or agreement on the Final Payment
21 List, whichever is later, Defendants shall wire to the Administrator an amount sufficient to pay all
22 Authorized Claimants on the Final Payment List in the amount provided therein, Class Counsel's
23 approved attorneys' fees and costs, and the Class Representative's approved Service Award.

24 (f) Within ten (10) days of receipt of the settlement funds, the Administrator shall issue
25 checks to Class Counsel, Class Representative, and the Settlement Class Members who do not timely
26 and properly opt out or exclude themselves from the settlement, as set forth herein.
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(g) Each settlement check shall include the following release language on the back of the check:

By signing and cashing or otherwise negotiating this check I release all claims or causes of action I have against the Released Parties in the lawsuit styled *Jacquelyn Burton et al. v. AMNJ Enterprises, Inc. et al.*, Case No. 2:19-cv-164-PP (the “Action”) for the claims that were asserted in any civil complaint filed in the Action; that relate to or arise out of the reimbursement of expenses, under-reimbursement of expenses, or failure to reimburse expenses of any kind; that relate to or arise out of the payment of the applicable minimum wage, under-payment of the applicable minimum wage, or failure to pay the applicable minimum wage; or that arise under WI Stat. § 109.01, Wisconsin common law, or any similar state, municipal or local laws. In addition to the foregoing, Authorized Claimants have also agreed to release the Released Parties from federal claims under the FLSA during the Release Period.

42. Records and Disputes: If a Settlement Class Member who receives a Claim Form wishes to dispute the calculation of his or her Individual Settlement Payment, the Settlement Class Member may so notify the Administrator or Class Counsel and should produce any supporting information and/or evidence available to the Settlement Class Member. The Parties will meet and confer in an attempt to resolve any disputes and will endeavor to resolve the issue informally. If a person believes that he or she was wrongly excluded from being a member of the Settlement Class, the Parties will endeavor to resolve the issue informally with any additional and agreed upon amounts to come from the Contingent Fund.

43. Objections to the Settlement: Settlement Class Members who wish to object to the Settlement must not exclude themselves from the Settlement and must serve on the Administrator, not later than thirty (30) calendar days after the date that the Administrator first mails the Notice Packets (“Objection Deadline”), a written statement objecting to the Settlement and setting forth the grounds for the objection, as explained further in the Notice. This statement also must indicate whether the Settlement Class Member intends to appear and object to the Settlement at the Final Approval Hearing. The failure to so indicate will constitute a waiver of the right to appear at the

1 hearing. A Settlement Class Member who does not submit an objection in the manner and by the
2 deadline specified above shall be deemed to have waived all objections and will be foreclosed from
3 making any objection to the Settlement, whether by appeal or otherwise, absent a contrary order of
4 the Court.

5 44. Requests for Exclusion:

6
7 (a) Settlement Class Members who wish to exclude themselves from the Settlement (opt
8 out of the Settlement) must submit to the Administrator, not later than thirty (30) calendar days after
9 the date that the Administrator first mails the Notice Packets (“Opt-Out Deadline”), an Exclusion
10 Letter requesting that he or she be excluded from the Settlement Class. Exclusion Letters may be
11 submitted to the Administrator via U.S. Mail or fax. A Settlement Class Member who does not
12 submit a valid and timely Exclusion Letter in the manner and by the deadline specified above shall
13 be bound by all terms and conditions of the Settlement, releases and by the Judgment, regardless of
14 whether he or she submits a Claim Form. A Settlement Class Member who timely submits a valid
15 Exclusion Letter shall not participate in, or be bound by, the Settlement or the Judgment in any
16 respect. To be valid, Exclusion Letters must be submitted to the Administrator by the Opt-Out
17 Deadline. Persons who submit an Exclusion Letter shall not be permitted to file objections to the
18 Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.
19

20 (b) If a Settlement Class Member completes and submits both a Claim Form and an
21 Exclusion Letter, the Administrator will contact the Settlement Class Member to obtain clarification
22 of the Settlement Class Member’s intent. In the event that the Administrator is unable to obtain
23 clarification of the Settlement Class Member’s intent by the time of the Final Approval Hearing, it
24 will be presumed that the Claim Form is controlling, and such Settlement Class Member shall be
25 treated as an Authorized Claimant, be paid an Individual Settlement Payment pursuant to the Claim
26 Form, and be bound by the terms of the Settlement. The Administrator will inform the Parties’
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1 Counsel of the name of any person who submits both a Claim Form and an Exclusion Letter. As
2 necessary, the Court will be the final arbiter with respect to any disputes as to whether a person has
3 filed a valid Claim Form, a valid Exclusion Letter, a valid objection to the Settlement, and/or a valid
4 dispute as to the person's inclusion or exclusion as a Participating Class Member and/or Authorized
5 Claimant.

6
7 (c) Although Settlement Class Members who do not submit either a valid and timely
8 Claim Form or a valid and timely Exclusion Letter will not receive an Individual Settlement
9 Payment, they shall be bound by all of the terms of the Settlement, including without limitation, the
10 release set forth in the Settlement.

11 45. Final Approval:

12 (a) Within ten (10) calendar days prior to the Final Approval Hearing, Plaintiffs will file
13 with the Court a motion for final approval of the Settlement and a memorandum in support of their
14 motion. Class Counsel will prepare the motion for final approval and will provide Defendants'
15 Counsel sufficient opportunity to review and agree on the content of the motion before it is filed.

16
17 (b) At the time the motion for final approval of the Settlement is filed, Class Counsel or
18 the Administrator shall provide the Court a report specifying the due diligence that it has undertaken
19 with regard to the mailing of the Notice; and reporting (to date) on the number of claims, objections,
20 disputes (and status), and opt-outs submitted.

21
22 (c) Not later than five (5) court days before the Final Approval Hearing, the Parties may
23 file, jointly or separately, a reply in support of their joint motion for final approval of the Settlement,
24 in the event any opposition to the joint motion for final approval has been filed. Likewise, Class
25 Counsel may file a reply in support of the motion for approval of Class Counsel's attorney's fees and
26 costs, in the event any opposition to the motion for such attorneys' fees and/or costs has been filed.
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1 (d) At or before the Final Approval Hearing, the Parties will present a Judgment for the
2 Court's entry. After entry of the Judgment, the Court will have continuing jurisdiction over the
3 Action and the Settlement solely for purposes of enforcing the Settlement, addressing settlement
4 administration matters, and addressing such post-Judgment matters as may be appropriate under
5 court rules or applicable law.
6

7 (e) Upon the filing of the motion for final approval of the Settlement, the Parties will
8 submit a proposed Order in a mutually agreeable form:

- 9 • Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
10 adequate, and directing consummation of its terms and provisions;
- 11 • Approving Class Counsel's motion for attorneys' fees and expenses;
- 12 • Approving the Class Representatives' service payments;
- 13 • Permanently enjoining all Settlement Class Members (Authorized Claimants and
14 Non-Claimant Settlement Class Member) (other than those who filed timely and valid
15 Exclusion Letters) from prosecuting against the Released Parties (defined below) any
16 and all of the Released Claims of the Authorized Claimants and Non-Claimant
17 Settlement Class Members (defined below);
- 18 • Permanently enjoining the Class Representative from prosecuting against the
19 Released Parties any and all of the Class Representative's Released Claims (as
20 defined below); and
- 21 • Dismissing the Action with prejudice.
22

23
24 46. Returned Checks: If an Individual Settlement Payment check envelope is returned as
25 undeliverable, the Administrator will use its discretion to take all steps necessary to locate an
26 updated mailing address for that Settlement Class Member, including without limitation, enhanced
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1 skip tracing methods, calling and/or emailing the Authorized Claimant using the telephone number
2 and/or email address provided in his or her returned Claim Form.

3 47. Uncashed Checks: If an Authorized Claimant has not cashed his or her Individual
4 Settlement Payment check within one-hundred twenty (120) calendar days after issuance, such check
5 will become stale and the funds returned by the Administrator to Defendants.
6

7 **V.**
8 **RELEASE OF CLAIMS**

9 48. Settlement Class Members' Released Claims: Upon the Effective Date of the
10 Settlement, the Class Representative and the Settlement Class Members (other than those who
11 submit valid and timely Exclusion Letters) will release and forever discharge Defendants, and each
12 of their former and present predecessors, successors, parents, subsidiaries, franchisors, insurers, and
13 affiliates, whatever their current or former legal names or legal entity status, and each of their
14 respective current and former owners, officers, directors, employees, partners, shareholders, and
15 agents, and any other successors, assigns, or legal representatives ("Released Parties"), from any and
16 all claims, rights, demands, liabilities and causes of action of every nature and description, whether
17 known or unknown, arising on or before the date the Court grants preliminary approval ("Release
18 Period"), arising out of, based on, or encompassed by: (a) the claims that were asserted in any civil
19 complaint filed in this case on behalf of any Settlement Class Member; (b) claims that relate to or
20 arise out of the reimbursement of expenses, under-reimbursement of expenses, or failure to
21 reimburse expenses of any kind; (c) claims that relate to or arise out of the payment of the applicable
22 minimum wage, under-payment of the applicable minimum wage, or failure to pay the applicable
23 minimum wage; or (d) claims that arise under the WI Stat. § 109.01 *et seq.*, Wisconsin common law,
24 or any similar state, municipal or local laws but without releasing federal or claims under the Fair
25 Labor Standards Act (FLSA). Without limiting the generality of the foregoing, the claim preclusion
26 effect of this Settlement, and the judgment thereon, for res judicata purposes shall be co-extensive
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1 with this release of claims. (collectively, the “Settlement Class Members Released Claims”). In
2 addition to the foregoing, Authorized Claimants also agree to release the Release Parties from
3 federal claims under the FLSA during the Release Period.

4 49. Release of Fees and Costs: Plaintiffs, on behalf of themselves and the Settlement
5 Class Members, hereby irrevocably and unconditionally release, acquit, and forever discharge any
6 claim that they have or may have against Defendants for attorneys’ fees, costs, or expenses
7 associated with this Action, including but not limited to those attorneys’ fees, costs, or expenses
8 associated with Class Counsel’s representation of the Plaintiffs and Settlement Class Members in
9 this Action. Plaintiffs further understand and agree that any fees and costs payment provided for
10 herein will be the full, final, and complete payment of all attorneys’ fees, costs, and expenses
11 associated with Class Counsel’s representation of Plaintiffs and the Settlement Class Members in
12 this Action.
13

14 50. General Release by Class Representative:

15 (a) In exchange for the Service Award described herein, the Class Representative
16 agrees to sign a Supplemental Settlement Agreement containing a General Release of claims in the
17 form attached as Exhibit A.
18

19 (b) The Parties agree that any refusal by the Court to approve of the General
20 Release by Class Representative as set forth in this paragraph shall not be a basis for rendering the
21 entire Settlement voidable or unenforceable. The Parties further agree that the Service Award is
22 contingent upon the execution of the Supplemental Settlement Agreement and General Release.
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VI.
ADDITIONAL PROVISIONS

51. No Waiver of Arbitration Agreements: The Parties agree that, by entering into and seeking Court approval of this Agreement, Defendants in no way waive any rights to enforce arbitration agreements entered into between Defendants and Settlement Class Members, including the waiver of class and collective action litigation, or to enforce similar agreements with other employees.

52. Signatories:

(a) The respective signatories to the Settlement represent that he, she or they are fully authorized to enter into this Settlement and bind to its terms and conditions the respective entities for which the person is signing as shown on the signature line.

(b) The Parties agree that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice will advise all Settlement Class Members of the binding nature of the release. Excepting only the Settlement Class Members who submit a valid and timely Exclusion Letter, this Agreement shall have the same force and effect as if it were executed by each Settlement Class Member.

53. Cooperation to Implement Settlement: The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to executing such documents and taking such other actions as may reasonably be necessary to implement the terms of the Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of the Settlement.

1 54. Disputes: Any dispute between the Parties concerning the interpretation or
2 implementation of this Agreement will be resolved by the Court. Prior to any such resort to the
3 Court, counsel for the Parties will confer in good faith to resolve the dispute. If the Parties are unable
4 to resolve the dispute themselves, the dispute will be submitted to the Court, unless the Parties agree
5 otherwise.
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7 55. No Prior Assignments: The Parties represent, covenant, and warrant that they have
8 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
9 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
10 or right released and discharged in this Settlement.

11 56. No Admission of Liability and Inadmissibility of Settlement:

12 (a) Defendants deny liability to Plaintiff and the Settlement Class for any claim or cause
13 of action. Defendants have denied and continue to deny each of the claims and contentions alleged
14 by Plaintiff in the Action. Defendants have repeatedly asserted and continue to assert defenses
15 thereto, and have expressly denied and continue to deny any wrongdoing or legal liability arising out
16 of any of the facts or conduct alleged in the Action. Defendants also have denied and continue to
17 deny the allegations that the Settlement Class Members have suffered damage or that the Settlement
18 Class Members were harmed by the conduct alleged in the Action. By entering into this Agreement,
19 Defendants in no way admit to the suitability of this Action for class action litigation other than for
20 purposes of settlement.
21

22 (b) Settlement of the Action and all acts performed or documents executed in furtherance
23 of this Agreement or the settlement embodied herein: (a) are not, shall not be deemed to be, and may
24 not be used as an admission or evidence of any wrongdoing or liability on the part of Defendants, or
25 of the truth of any of the factual allegations in any and all Complaints filed in the Action; (b) are not,
26 shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on
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1 the part of Defendants in any civil, criminal, administrative or arbitral proceeding; and (c) are not,
2 shall not be deemed to be, and may not be used as an admission or evidence of the appropriateness
3 of these or similar claims for class or collective action treatment other than for purposes of
4 administering this Agreement. The Parties understand and agree that this Agreement and any exhibit
5 hereto are settlement documents and shall be inadmissible in any proceeding for any reason, except a
6 proceeding to enforce the terms of this Agreement.
7

8 57. Fair, Adequate, and Reasonable Settlement: The Parties agree that the Settlement is
9 fair, adequate, and reasonable, and will so represent it to the Court; provided, however, that nothing
10 herein is intended to, and shall not be construed to, waive the confidentiality of the Parties'
11 settlement or settlement negotiations and discussions pursuant to the Federal Rules of Evidence.
12

13 58. Waiver of Appeals: The Parties agree to waive all appeals from the Court's final
14 approval of this Settlement, unless the Court materially modifies the Settlement; provided, however,
15 that Plaintiff may appeal any reduction in the amount of Class Counsel's fees and expenses and/or
16 the service payment to the Class Representative. Any reduction in the amount of Class Counsel's
17 fees, Class Counsel's expenses, and/or the service payment to the Class Representative will not,
18 however, constitute a material modification of the Settlement and will not be grounds to void the
19 Settlement.
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21 58. No Tax Advice: Neither Class Counsel nor Defendants' Counsel intend anything
22 contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in
23 this Settlement be relied upon as such within the meaning of United States Treasury Department
24 Circular 230 (31 CFR Part 10, as amended) or otherwise.
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26 59. Class Certification and Settlement Approval:

27 (a) In connection with the request for Preliminary Approval of the Settlement,
28 Plaintiff shall seek an order certifying the Settlement Class for settlement purposes only under WI

1 Stat. § 109.01. Defendants are consenting to the certification of the Settlement Class for settlement
2 purposes only and contend that class certification would not be appropriate if the matter were
3 litigated.

4 (b) In the event: (i) the Court does not enter the Order specified herein; (ii) the
5 Court does not finally approve the Settlement as provided herein; (iii) the Court does not enter a
6 Final Judgment as provided herein, which becomes final as a result of the occurrence of the
7 Effective Date; or (iv) the Settlement does not become Final for any other reason, this Agreement
8 shall be null and void and any order or judgment entered by the Court in furtherance of this
9 Settlement shall be treated as void from the beginning. In such a case, any certified class shall be
10 decertified, the Parties shall be returned to their respective statuses as of the date and time
11 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
12 if this Agreement had not been executed. In such case, the Settlement shall not be used or be
13 admissible in any subsequent proceedings, either in this Action, with the Court or in any other Court
14 or forum. In the event an appeal is filed from the Court's Final Judgment, or any other appellate
15 review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending
16 final resolution of the appeal or other appellate review.

17 60. Use of Confidential Documents and Information: Plaintiff and Class Counsel agree
18 to keep confidential all documents and information produced in the course of discovery and
19 litigation of this Action, and Plaintiff agrees to return any such documents to Class Counsel. All
20 documents and information produced in discovery in this Action, otherwise obtained in the course of
21 the litigation of this Action, as well as all documents and information (including Settlement Class
22 Member contact information) produced in connection with effectuation of this Settlement, shall only
23 be used for purposes directly related to the effectuation of this Settlement.
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1 61. Cooperation in Drafting: The Parties agree that the terms and conditions of this
2 Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties, and
3 that this Settlement shall not be construed in favor of or against any Party by reason of the extent to
4 which any Party, his, her, its, or their counsel participated in its drafting.

5 62. Applicable Law: All terms and conditions of this Agreement and its exhibits will be
6 governed by and interpreted according to the laws of the State of Wisconsin, without giving effect to
7 any conflict of law principles or choice of law principles.

8 63. Captions and Headings: Captions, headings or paragraph titles in this Settlement are
9 a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
10 of this Settlement or any provision.

11 64. Modification: This Settlement may not be changed, altered, or modified, except in
12 writing, and signed by the Parties, and approved by the Court. This Settlement may not be
13 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

14 65. Integration Clause: This Settlement contains the entire agreement between the Parties
15 relating to the resolution of the Action. All prior or contemporaneous agreements, understandings,
16 representations, and statements, whether oral or written and whether by a Party or such Party's legal
17 counsel, are merged in this Agreement. No rights under this Agreement may be waived except in
18 writing.

19 66. Binding on Assigns: This Settlement may be binding upon and inure to the benefit of
20 the Parties and their respective heirs, trustee, executors, administrators, successors and assigns.

21 67. Counterparts: This Agreement shall be executed in counterparts, and when each
22 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
23 original, and when taken together with other signed counterparts, shall constitute one Settlement,
24 which shall be binding upon and effective as to all Parties.
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68. Interim Stay of Proceedings in Action: The Parties agree to hold in abeyance all proceedings in the Action, except such proceeding necessary or appropriate to implement and complete the Settlement, pending the Final Approval Hearing.

69. Enforceability: When this Agreement is signed by all Parties and their attorneys of record, it shall be fully enforceable by the court pursuant to any applicable provision of law.

70. Revocation of Previous Agreement: By executing this Agreement, the Parties expressly revoke and render void the Settlement and Release Agreement signed by Plaintiff on April 14, 2020.

Date: 8/10/20 [Signature]
AMNJ Enterprises, Inc.

By its: V. PRESIDENT

Date: 8/10/20 
Joel Burton

Date:

Aug 7, 2020



Jacquelyn R Burton (Aug 7, 2020 16:47 CDT)

Jacquelyn Burton